

1 “Company”), securities analysts reports and advisories about the Company, and information
2 readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will
3 exist for the allegations set forth herein after a reasonable opportunity for discovery.

4 **NATURE OF THE ACTION**

5 1. This is a federal class action on behalf of persons who purchased or otherwise
6 acquired Apollo securities between November 28, 2001 and October 18, 2006, inclusive (the
7 “Class Period”), seeking to pursue remedies under the Securities Exchange Act of 1934 (the
8 “Exchange Act”).

9 2. As discussed in more detail below, Defendants issued, or caused to be issued,
10 false and misleading statements during the Class Period to artificially inflate the value of
11 Apollo stock.

12 3. From 2000 through 2004, the defendants caused Apollo to issue massive
13 amounts of stock options to all levels of management as incentives to improve the Company’s
14 performance. In addition, throughout the Class Period, defendants assured the investing
15 public that their stock plan was in accordance with all relevant laws and rules. While the
16 issuance of stock options to management is not unusual as a mechanism to encourage
17 corporate performance, unfortunately for Apollo investors, the Company “backdated” options
18 granted to all levels of management. Backdating allowed the option recipients to reap a
19 windfall when the Company looked back in time and chose option issue dates when the stock
20 was trading at lower prices, thereby allowing recipients to make even more money when they
21 exercised the options on the spread between the artificially depressed option price and the
22 later exercise price.

23 4. On June 9, 2006, in the midst of a nation-wide options scandal in connection
24 with the backdating of options, Apollo announced that it had performed a review of its stock
25 option practices during fiscal 2000-2004 and initially concluded that it had “complied with all
26 applicable laws,” and it would hire an outside firm to review those conclusions. The
27 Company flatly denied that it had backdated options.

1 November 28, 2001 (the “2001 10-K”); Apollo’s Form 10-K for the year ended August 31,
2 2002 filed with the SEC on November 27, 2002 (the “2002 10-K”); Apollo’s Form 10-K for
3 the year ended August 31, 2003 filed with the SEC on November 26, 2003 (the “2003 10-
4 K”); Apollo’s Form 10-K for the year ended August 31, 2004 filed with the SEC on
5 November 15, 2004 (the “2004 10-K”); and Apollo’s Form 10-K for the year ended August
6 31, 2005 filed with the SEC on November 14, 2005 (the “2005 10-K”).

7 16. Defendant Todd S. Nelson (“Nelson”) was Apollo’s President and Chief
8 Executive Officer, and a Director of Apollo, until his resignation on or about January 11,
9 2006. Nelson served as Chairman of Apollo’s Board until his resignation. Nelson signed the
10 2001 10-K; the 2002 10-K; the 2003 10-K; the 2004 10-K; and the 2005 10-K.

11 17. Defendant Kenda B. Gonzales was, at all relevant times, Apollo’s Chief
12 Financial Officer, Secretary and Treasurer. Gonzales signed the 2001 10-K; the 2002 10-K;
13 the 2003 10-K; the 2004 10-K; and the 2005 10-K.

14 18. Defendant Peter V. Sperling (“Peter Sperling”) was, at all relevant times, a
15 Senior Vice President and Director of Apollo. Peter Sperling signed the 2001 10-K; the 2002
16 10-K; the 2003 10-K; the 2004 10-K; and the 2005 10-K.

17 19. Defendant Daniel E. Bachus (“Bachus”) was, at all relevant times, Apollo’s
18 Chief Accounting Officer and Controller. Bachus signed the 2001 10-K; the 2002 10-K; the
19 2003 10-K; the 2004 10-K; and the 2005 10-K.

20 20. Defendant Dino J. DeConcini (“DeConcini”) was, at all relevant times, a
21 Director of Apollo. DeConcini signed the 2001 10-K; the 2002 10-K; the 2003 10-K; the
22 2004 10-K; and the 2005 10-K.

23 21. J. Jorge Klor de Alva (“de Alva”) was a Director of Apollo during 2001 and
24 2002. de Alva signed the 2001 10-K and the 2002 10-K.

25 22. Thomas C. Weir (“Weir”) was a Director of Apollo during 2001 and 2002.
26 Weir signed the 2001 10-K and the 2002 10-K.

1 23. Defendant John R. Norton III (“Norton”) was, at all relevant times, a Director
2 of Apollo. Norton signed the 2001 10-K; the 2002 10-K; the 2003 10-K; the 2004 10-K; and
3 the 2005 10-K.

4 24. Defendant Hedy F. Govenar (“Govenar”) was, at all relevant times, a Director
5 of Apollo. Govenar signed the 2001 10-K; the 2002 10-K; the 2003 10-K; the 2004 10-K;
6 and the 2005 10-K.

7 25. Defendant John Blair (“Blair”) was, at all relevant times, a Director of Apollo.
8 Blair signed the 2001 10-K; the 2002 10-K; the 2003 10-K; the 2004 10-K; and the 2005 10-
9 K.

10 26. Defendants John Sperling, Nelson, Gonzales, Peter Sperling, Bachus,
11 DeConcini, de Alva, Weir, Norton, Govenar and Blair are collectively referred to hereinafter
12 as the “Individual Defendants.”

13 27. During the Class Period, each of the Individual Defendants, as senior executive
14 officers and/or directors of Apollo, was privy to non-public information concerning its
15 business, finances, products, markets and present and future business prospects via access to
16 internal corporate documents, conversations and connections with other corporate officers
17 and employees, attendance at management and Board of Directors meetings and committees
18 thereof and via reports and other information provided to them in connection therewith.
19 Because of their possession of such information, the Individual Defendants knew or
20 recklessly disregarded the fact that adverse facts specified herein had not been disclosed to,
21 and were being concealed from, the investing public.

22 28. The Individual Defendants are liable as direct participants in the wrongs
23 complained of herein. In addition, the Individual Defendants, by reason of their status as
24 senior executive officers and/or directors, were “controlling persons” within the meaning of
25 §20(a) of the Exchange Act and had the power and influence to cause the Company to engage
26 in the unlawful conduct complained of herein. Because of their positions of control, the
27 Individual Defendants were able to and did, directly or indirectly, control the conduct of
28 Apollo’s business.

1 publicly-traded securities of Apollo between November 28, 2001 and October 18, 2006,
2 inclusive, and who were damaged thereby (the “Class”). Excluded from the Class are
3 defendants, the officers and directors of the Company, at all relevant times, members of their
4 immediate families and their legal representatives, heirs, successors or assigns and any entity
5 in which defendants have or had a controlling interest.

6 33. The members of the Class are so numerous that joinder of all members is
7 impracticable. Throughout the Class Period, Apollo stock was actively traded on the
8 NASDAQ. While the exact number of Class members is unknown to plaintiff at this time
9 and can only be ascertained through appropriate discovery, plaintiff believes that there are
10 hundreds or thousands of members in the proposed Class. Record owners and other members
11 of the Class may be identified from records maintained by Apollo or its transfer agent and
12 may be notified of the pendency of this action by mail, using the form of notice similar to that
13 customarily used in securities class actions.

14 34. Plaintiff’s claims are typical of the claims of the members of the Class as all
15 members of the Class are similarly affected by defendants’ wrongful conduct in violation of
16 federal law complained of herein.

17 35. Plaintiff will fairly and adequately protect the interests of the members of the
18 Class and has retained counsel competent and experienced in class and securities litigation.

19 36. Common questions of law and fact exist as to all members of the Class and
20 predominate over any questions solely affecting individual members of the Class. Among the
21 questions of law and fact common to the Class are:

22 (a) whether the federal securities laws were violated by defendants’ acts as alleged
23 herein;

24 (b) whether statements made by defendants to the investing public during the Class
25 Period misrepresented material facts about the business and operations of Apollo;

26 (c) whether the prices of Apollo’s publicly traded securities were artificially
27 inflated during the Class Period; and
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1 (d) to what extent the members of the Class have sustained damages and the proper
2 measure of damages.

3 37. A class action is superior to all other available methods for the fair and efficient
4 adjudication of this controversy since joinder of all members is impracticable. Furthermore,
5 as the damages suffered by individual Class members may be relatively small, the expense
6 and burden of individual litigation make it impossible for members of the Class to
7 individually redress the wrongs done to them. There will be no difficulty in the management
8 of this action as a class action.

9 **SUBSTANTIVE ALLEGATIONS**

10 **BACKGROUND**

11 **Stock Options As Corporate Incentive**

12 38. In search of a way to reward top managers in recent decades, especially at
13 emerging companies with little to no revenue, directors sweetened pay packages with options.
14 Options are intended to provide top managers with an incentive to manage their companies
15 well so that the stock rises and all shareholders benefit.

16 39. Options give a holder the right to buy stock at a specific price at a point in the
17 future. When a stock's price rises over the price of the options, the options become valuable.
18 For example, if a manager were to buy 10,000 shares of stock at \$10 per share today, the
19 purchase would cost \$100,000. If the manager had options to lock in that purchase at \$10 per
20 share one year from now, when the stock might be trading at \$20 per share, the manager's
21 \$100,000 purchase would instantly be worth \$200,000 -- a bonus of \$100,000.

22 40. Backdating options represents a chance to make options even more attractive.
23 If a company could look backward to a time when its stock was hovering at a low point and
24 designate that as the time it gave out options, the manager receiving the options would
25 potentially have a bigger windfall when he exercised those options due to the larger spread
26 between the grant and exercise prices.

MATERIALLY FALSE AND MISLEADING STATEMENTS

41. In Apollo’s 2001 10-K, the Company set forth its stock options plan:

Apollo Group, Inc. Amended and Restated Director Stock Plan.

The Board of Directors has adopted the Apollo Group, Inc. Amended and Restated Director Stock Plan (“Director Plan”) to attract and retain independent directors. Under the amended Director Plan, up to 925,000 shares of Apollo Education Group Class A common stock and up to 100,000 shares of University of Phoenix Online common stock may be available for grant of awards. Options granted under the amended Director Plan are fully vested six months and one day after the date of grant and are exercisable in full thereafter until the date that is ten years after the date of grant. The exercise price per share under the amended Director Plan is equal to the fair market value of such shares upon the date of grant. Under the amended Director Plan, each non-employee director automatically receives a grant of options to purchase 20,250 shares of Apollo Education Group Class A common stock on September 1 of each year through 2003. In addition, under the amended Director Plan each non-employee director who was on the Board of Directors on the date of the offering of University of Phoenix Online common stock received a grant of stock options to purchase 10,000 shares of University of Phoenix Online common stock on the date of such offering at the initial public offering price of \$14.00 per share, which became exercisable six months and one day after the date University of Phoenix Online common stock options were granted.

42. The 2001 10-K further set forth the options granted by Apollo to John Sperling and the four other highest compensated officers of Apollo:

Option Grants to Purchase Apollo Education Group Class A Common Stock

In the Last Fiscal Year

Name	Number of Securities Underlying Options Granted	Option Grants in Fiscal Year 2001			Potential Realizable Value at Assumed	
		Percent of Total Options Granted To Employees in Fiscal Year	Exercise Price Per Share (\$/Share)	Expiration Date	Annual Rates of Stock Price Appreciation for Option Term	
					5%	10%
John G. Sperling	187,500	18.46%	\$ 22.260	12/15/10	\$ 2,624,896	\$ 6,652,002
Todd S. Nelson	150,000	14.77%	22.260	12/15/10	2,099,917	5,321,602
Anthony Digiovanni	15,000	1.48%	22.260	12/15/10	209,992	532,160
Kenda B. Gonzales	15,000	1.48%	22.260	12/15/10	209,992	532,160
Laura Palmer Noone	15,000	1.48%	22.260	12/15/10	209,992	532,160

Option Grants to Purchase University of Phoenix Online Common Stock

In the Last Fiscal Year

Name	Number of Securities Underlying Options Granted	Percent of Total Options Granted To Employees in Fiscal Year	Exercise Price Per Share (\$/Share)	Expiration Date	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term	
					5%	10%
John G. Sperling	900,000	20.43%	\$ 9.333	9/27/10	\$ 5,282,696	\$ 13,387,389
Todd S. Nelson	750,000	17.03%	9.333	9/27/10	4,402,247	11,156,157
Anthony Digiovanni	375,000	8.51%	9.333	9/27/10	2,201,123	5,578,079
Jerry F. Noble	22,500	0.51%	9.333	9/27/10	132,067	334,685
Kenda B. Gonzales	225,000	5.08%	9.333	9/27/10	1,320,674	3,346,847
Laura Palmer Noone	150,000	3.41%	9.333	9/27/10	880,449	2,231,231

43. In a section entitled, “Board Compensation Committee Report on Executive Compensation, “ the 2001 10-K further assured investors that Apollo’s Compensation Committee “assesses the effectiveness” of the compensation program and ties options grants to company and individual performance:

Board Compensation Committee Report on Executive Compensation

Our Compensation Committee (the “Committee”) is composed entirely of independent outside members of our Board of Directors. The committee reviews and approves each of the elements of our executive compensation program related to John G. Sperling and Todd S. Nelson (the “Senior Executives”), and **periodically assesses the effectiveness and competitiveness of the program in total**. In addition, the committee administers the key provisions of the executive compensation program and reviews with our Board of Directors in detail all aspects of compensation for our Senior Executives. The committee has furnished the following report on executive compensation:

Overview and Philosophy. Our compensation program for Senior Executives is primarily comprised of base salary, annual bonus, and long-term incentives in the form of stock option grants. Senior Executives also participate in various other benefit plans, including medical and retirement plans, generally available to all of our employees.

1 *Options.* We believe that it is important for Senior Executives to
2 have an equity stake in us, and, toward this end, we make option
3 grants to key Senior Executives from time to time under the Apollo
4 Group, Inc. 2000 Stock Incentive Plan. In making option awards, the
5 Compensation Committee reviews our financial performance during
6 the past fiscal year, the awards granted to other executives, and the
7 individual officer's specific role.

8 (Emphasis supplied).

9 44. The statements set forth above in paragraphs 41-43 were materially false and
10 misleading in that they omitted to disclose that the process by which the options were granted
11 was not tied to performance and was improperly documented and that the options granted
12 were wrongfully backdated in order to artificially inflate the value of the options to the
13 benefit the option recipients.

14 45. In Apollo's 2002 10-K, the Company set forth its stock options plan:

15 ***Apollo Group, Inc. Amended and Restated Director Stock Plan.***

16 The Board of Directors has adopted the Apollo Group, Inc.
17 Amended and Restated Director Stock Plan ("Director Plan") to
18 attract and retain independent directors. Under the amended Director
19 Plan, up to 925,000 shares of Apollo Education Group Class A
20 common stock and up to 100,000 shares of University of Phoenix
21 Online common stock may be available for grant of awards. Options
22 granted under the amended Director Plan are fully vested six months
23 and one day after the date of grant and are exercisable in full
24 thereafter until the date that is ten years after the date of grant. The
25 exercise price per share under the amended Director Plan is equal to
26 the fair market value of such shares upon the date of grant. Under
27 the amended Director Plan, each non-employee director
28 automatically receives a grant of options to purchase 20,250 shares
of Apollo Education Group Class A common stock on September 1
of each year through 2003.

 46. The 2002 10-K further set forth the options granted by Apollo to John Sperling
and the four other highest compensated officers of Apollo:

1 **Option Grants to Purchase Apollo Education Group Class A Common Stock In the Last Fiscal Year**

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Name	Number of Securities Underlying Options Granted	Option Grants in Fiscal Year 2002		Exercise Price Per Share (\$/Share)	Expiration Date	Potential Realizable Value at Assumed	
		Percent of Total Options Granted To Employees in Fiscal Year				Annual Rates of Stock Price Appreciation for Option Term	
						5%	10%
John G. Sperling	225,000	11.23 ^a		\$ 23.333	9/21/11	\$ 3,301,692	\$ 8,367,136
Todd S. Nelson	225,000	11.23%		23.333	9/21/11	3,301,692	8,367,136
Anthony	11,250	0.56%		23.333	9/21/11	165,085	418,357
Kenda B. Gonzales	37,500	1.87%		23.333	9/21/11	550,282	1,394,523
Laura Palmer	37,500	1.87%		23.333	9/21/11	550,282	1,394,523

9 *All employees of the Company, including the five most highly compensated executive officers, received an option grant in 2002 for 150 shares of Apollo Education Group Class A common stock. The exercise price per share for this grant is \$29.327 and the expiration date is January 12, 2012. The potential realizable value of these shares assumed annual rates of stock price appreciation of 5% for the option term is \$2,767 and 10% for the option term is \$7,011.

11 **Option Grants to Purchase University of Phoenix Online Common Stock In the Last Fiscal Year**

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Name	Number of Securities Underlying Options Granted	Option Grants in Fiscal Year 2002		Exercise Price Per Share (\$/Share)	Expiration Date	Potential Realizable Value at Assumed	
		Percent of Total Options Granted To Employees in Fiscal Year				Annual Rates of Stock Price Appreciation for Option Term	
						5%	10%
John G. Sperling	200,000	22.69		\$ 18.998	9/21/11	\$ 2,389,485	\$ 6,055,424
Todd S. Nelson	200,000	22.69 ^c		18.998	9/21/11	2,389,485	6,055,424
Anthony Digiovanni	73,333	8.32 ^d		18.998	9/21/11	876,141	2,220,312
Kenda B. Gonzales	33,333	3.78 ^e		18.998	9/21/11	398,244	1,009,227
Laura Palmer Noone	6,666	0.76 ^f		18.998	9/21/11	79,642	201,827

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20 47. In a section entitled, "Board Compensation Committee Report on Executive

21 Compensation," the 2002 10-K substantially repeated assurances to investors set forth above

22 in paragraph 43 that Apollo's Compensation Committee "assesses the effectiveness" of the

23 compensation program and ties options grants to company and individual performance.

24 48. The statements set forth above in paragraphs 45-47 were materially false and

25 misleading in that they omitted to disclose that the process by which the options were granted

26 was not tied to performance, was improperly documented and that the options granted were

27 wrongfully backdated in order to artificially inflate the value of the options to the benefit the

28 option recipients.

49. In Apollo's 2003 10-K, the Company set forth its stock options plan:

Apollo Group, Inc. Amended and Restated Director Stock Plan. The Board of Directors has adopted the Apollo Group, Inc. Amended and Restated Director Stock Plan ("Director Plan") to attract and retain independent directors. Under the amended Director Plan, up to 925,000 shares of Apollo Education Group Class A common stock and up to 100,000 shares of University of Phoenix Online common stock may be available for grant of awards. Options granted under the amended Director Plan are fully vested six months and one day after the date of grant and are exercisable in full thereafter until the date that is ten years after the date of grant. The exercise price per share under the amended Director Plan is equal to the fair market value of such shares upon the date of grant. Under the amended Director Plan, each non-employee director automatically receives a grant of options to purchase 20,250 shares of Apollo Education Group Class A common stock on September 1 of each year through 2003.

50. The 2003 10-K further set forth the options granted by Apollo to John Sperling and the four other highest compensated officers of Apollo:

Option Grants to Purchase Apollo Education Group Class A Common Stock

In the Last Fiscal Year

Name	Number of Securities Underlying Options Granted	Percent of Total Options Granted To Employees in Fiscal Year	Exercise Price Per Share (\$/Share)	Expiration Date	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term	
					5%	10%
John G. Sperling	100,000	6.67%	\$ 41.920	10/22/20	\$ 2,636,326	\$ 6,680,968
Todd S. Nelson	200,000	13.34%	41.920	10/22/20	5,272,653	13,361,937
Kenda B. Gonzales	50,000	3.33%	41.920	10/22/20	1,318,484	3,340,484
Laura Palmer Noone	25,000	1.67%	41.920	10/22/20	659,082	1,670,242
Robert A. Carroll	25,000	1.67%	41.920	10/22/20	659,082	1,670,242

Option Grants to Purchase University of Phoenix Online Common Stock

In the Last Fiscal Year

Name	Number of Securities Underlying Options Granted	Percent of Total Options Granted To Employees in Fiscal Year	Exercise Price Per Share (\$/Share)	Expiration Date	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term	
					5%	10%
John G. Sperling	100,000	20.25%	\$ 30.600	10/24/2012	\$ 1,924,418	\$4,876
Todd S. Nelson	200,000	40.51%	30.600	10/24/2012	3,848,835	9,753
Kenda B. Gonzales	—	0.00%				
Laura Palmer Noone	—	0.00%				
Robert A. Carroll	—	0.00%				

51. In a section entitled, “Board Compensation Committee Report on Executive Compensation, “ the 2003 10-K substantially repeated assurances to investors set forth above in paragraph 43 that Apollo’s Compensation Committee “assesses the effectiveness” of the compensation program and ties options grants to company and individual performance.

52. The statements set forth above in paragraphs 49-51 were materially false and misleading in that they omitted to disclose that the process by which the options were granted was not tied to performance, was improperly documented and that the options granted were wrongfully backdated in order to artificially inflate the value of the options to the benefit the option recipients.

53. In Apollo’s 2004 10-K, the Company set forth its stock options plan:

Apollo Group, Inc. Stock-Based Compensation Plans. Through 2003, the Director Stock Plan provided for an annual grant to the Company’s non-employee directors of options to purchase shares of the Company’s Apollo Education Group Class A common stock on September 1 of each year. The Company currently has two stock-based compensation plans in which non-employee directors can be issued options: the Apollo Group, Inc., Long-Term Incentive Plan (“LTIP”) and the Apollo Group, Inc., Amended and Restated 2000 Stock Incentive Plan (“2000 Incentive Plan”). Under both the LTIP and the 2000 Incentive Plan, the Company may grant options, incentive stock options, stock appreciation rights, and other stock-based

awards in the Company's Apollo Education Group Class A common stock to certain officers, key employees, or directors of the Company.

54. The 2004 10-K further set forth the options granted by Apollo to John Sperling and the four other highest compensated officers of Apollo:

Option Grants to Purchase Apollo Education Group Class A Common Stock in the Last Fiscal Year

Name	Number of Securities Underlying Options Granted	Option Grants in Fiscal Year 2004			Potential Realizable Value at Assumed	
		Percent of Total Options Granted to Employees in Fiscal Year	Exercise Price Per Share (\$/Share)	Expiration Date	Annual Rates of Stock Price Appreciation for Option Term	
					5%	10%
John G. Sperling	100,000	3.38%	\$ 60.900	10/20/2013	\$ 3,829,968	\$ 9,705,892
	20,250	0.68%	71.230	8/6/2014	907,122	2,298,826
Todd S. Nelson	300,000	10.13%	60.900	10/20/2013	11,489,905	29,117,675
	400,000	13.51%	71.230	8/6/2014	17,918,466	45,408,910
Kenda B. Gonzales	50,000	1.69%	60.900	10/20/2013	1,914,984	4,852,946
	50,000	1.69%	71.230	8/6/2014	2,239,808	5,676,114
Laura Palmer Noone	25,000	0.84%	60.900	10/20/2013	957,492	2,426,473
	20,000	0.68%	71.230	8/6/2014	895,923	2,270,446
Robert A. Carroll	20,000	0.68%	60.900	10/20/2013	765,994	1,941,178
	15,000	0.51%	71.230	8/6/2014	671,942	1,702,834

Option Grants to Purchase University of Phoenix Online Common Stock in the Last Fiscal Year

Name	Number of Securities Underlying Options Granted	Option Grants in Fiscal Year 2004			Potential Realizable Value at Assumed	
		Percent of Total Options Granted to Employees in Fiscal Year	Exercise Price Per Share (\$/Share)	Expiration Date	Annual Rates of Stock Price Appreciation for Option Term	
					5%	10%
John G. Sperling	—	0.00%	\$ —	—	\$ —	\$ —
Todd S. Nelson	100,000	20.61%	64.800	10/20/2013	4,075,237	10,327,451
Kenda B. Gonzales	—	0.00%	—	—	—	—
Laura Palmer Noone	—	0.00%	—	—	—	—
Robert A. Carroll	—	0.00%	—	—	—	—

55. In a section entitled, "Board Compensation Committee Report on Executive Compensation," the 2004 10-K substantially repeated assurances to investors set forth above in paragraph 43 that Apollo's Compensation Committee "assesses the effectiveness" of the compensation program and ties options grants to company and individual performance.

1 56. The statements set forth above in paragraphs 53-55 were materially false and
2 misleading in that they omitted to disclose that the process by which the options were granted
3 was deficient and improperly documented and that the options granted were wrongfully
4 backdated in order to artificially inflate the value of the options to the benefit the option
5 recipients.

6
7 57. In Apollo’s 2005 10-K, the Company set forth its stock options plan:

8 ***Apollo Group, Inc. Stock-Based Compensation Plans.*** Through 2003, the
9 Director Stock Plan provided for an annual grant to the Company’s non-
10 employee directors of options to purchase shares of the Company’s Apollo
11 Education Group Class A common stock on September 1 of each year. The
12 Company currently has two stock-based compensation plans in which non-
13 employee directors can be issued options: the Apollo Group, Inc. Long-Term
14 Incentive Plan (“LTIP”) and the Apollo Group, Inc. Amended and Restated
15 2000 Stock Incentive Plan (“2000 Incentive Plan”). Under both the LTIP and
16 the 2000 Incentive Plan, the Company may grant non-qualified stock
17 options, incentive stock options, stock appreciation rights, and other stock-
18 based awards in the Company’s Apollo Education Group Class A common
19 stock to certain officers, key employees, or directors of the Company.

20 58. In a section entitled, “Board Compensation Committee Report on Executive
21 Compensation, “ the 2005 10-K substantially repeated assurances to investors set forth above
22 in paragraph 43 that Apollo’s Compensation Committee “assesses the effectiveness” of the
23 compensation program and ties options grants to company and individual performance.

24 59. The Company did not grant options to John Sperling or the other highly
25 compensated executives who received options in the past. However, the statements set forth
26 above in paragraphs 57-58 were materially false and misleading in that they omitted to
27 disclose that the process by which the options were granted was deficient and improperly
28 documented and that the options granted were wrongfully backdated in order to artificially
inflate the value of the options to the benefit the option recipients.

1 wrongfully backdated in order to artificially inflate the value of the options to the benefit the
2 option recipients.

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4 63. On June 19, 2006, Apollo announced that it had received that day a subpoena
5 from the United States Department of Justice relating to stock option grants. The Company
6 stated that it “intends to cooperate fully in this matter.”

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8 64. The July 19 press release further reiterated that “Apollo's board of directors has
9 hired an outside firm to review and confirm the company's initial conclusions that the
10 company acted appropriately regarding its stock option practices. This review is on-going.”

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12 65. On this news, the Company's stock price dropped from \$54.82 per share on
13 June 19, 2006 to \$51.91 per share on June 20, 2006.

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15 66. The statements set forth above in paragraph 64 were materially false and
16 misleading in that they omitted to disclose that the process by which the options were granted
17 was not tied to performance, was improperly documented and that the options granted were
18 wrongfully backdated in order to artificially inflate the value of the options to the benefit the
19 option recipients.

20 **Further Revelations**

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22 67. On October 18, 2006, Apollo issued a press release wherein it set forth its
23 financial results for its fiscal year ended August 31, 2006.

24
25 68. In the October 18 press release, the Company disclosed for the first time that
26 *four months earlier*, the Apollo appointed a special independent committee to oversee the
27 investigation of its stock option practices:

28
On June 23, 2006, the Company's Board of Directors appointed a
special committee of two independent members of the Board of

1 Directors to oversee the previously announced review of the
2 Company's practices related to stock option grants.

3 69. The Company shockingly also disclosed for the first time that the outside firm
4 investigating the options practices had retained accounting experts and that, contrary to its
5 prior representations, “various deficiencies” in the granting and documenting of stock options
6 may lead to restatement of the Company’s financial statements:
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8 The special committee has retained independent legal counsel who
9 engaged outside accounting advisors to assist with the review. The
10 review is ongoing, however, various deficiencies in the process of
11 granting and documenting stock options have been identified to date.
12 The accounting impact of these matters has not been quantified. There
13 can be no assurances that the results of the investigation will not
14 require a possible restatement of the Company's financial statements
15 when the potential errors are quantified and assessed. The attached
16 unaudited financial statements do not include the impact of any
17 unrecorded non-cash equity-based compensation charges that may be
18 required at the conclusion of the review.

19 70. Following this announcement of previous undisclosed information, shares of
20 Apollo common stock declined by \$11.13 per share (or almost 23%) from \$48.68 per share
21 on October 17, 2006, to close at \$37.55 per share on October 18, 2006, on extraordinarily
22 heavy trading volume of 28,738,800 – over fifteen times the previous day’s volume.

23 71. The markets for Apollo’s securities were open, well-developed and efficient at
24 all relevant times. As a result of these materially false and misleading statements and failures
25 to disclose, Apollo’s securities traded at artificially inflated prices during the Class Period.
26 Plaintiff and other members of the Class purchased or otherwise acquired Apollo securities
27 relying upon the integrity of the market price of Apollo’s securities and market information
28 relating to Apollo, and have been damaged thereby.

72. During the Class Period, defendants materially misled the investing public,
thereby inflating the prices of Apollo’s securities, by publicly issuing false and misleading
statements and omitting to disclose material facts necessary to make defendants’ statements,

1 as set forth herein, not false and misleading. Said statements and omissions were materially
2 false and misleading in that they failed to disclose material adverse information and
3 misrepresented the truth about the Company, its business and operations, as alleged herein.

4 73. At all relevant times, the material misrepresentations and omissions
5 particularized in this Complaint directly or proximately caused or were a substantial
6 contributing cause of the damages sustained by plaintiff and other members of the Class. As
7 described herein, during the Class Period, defendants made or caused to be made a series of
8 materially false or misleading statements about Apollo's business, prospects and operations.
9 These material misstatements and omissions had the cause and effect of creating in the
10 market an unrealistically positive assessment of Apollo and its business, prospects and
11 operations, thus causing the Company's securities to be overvalued and artificially inflated at
12 all relevant times. Defendants' materially false and misleading statements during the Class
13 Period resulted in plaintiff and other members of the Class purchasing the Company's
14 securities at artificially inflated prices, thus causing the damages complained of herein.

15 **ADDITIONAL SCIENTER ALLEGATIONS**

16 As alleged herein, defendants acted with scienter in that defendants knew that the
17 public documents and statements issued or disseminated in the name of the Company were
18 materially false and misleading; knew that such statements or documents would be issued or
19 disseminated to the investing public; and knowingly and substantially participated or
20 acquiesced in the issuance or dissemination of such statements or documents as primary
21 violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by
22 virtue of their receipt of information reflecting the true facts regarding Apollo, their control
23 over, and/or receipt and/or modification of Apollo's allegedly materially misleading
24 misstatements and/or their associations with the Company which made them privy to
25 confidential proprietary information concerning Apollo, participated in the fraudulent scheme
26 alleged herein.

27 **LOSS CAUSATION/ECONOMIC LOSS**

1 During the Class Period, as detailed herein, defendants engaged in a scheme to deceive
2 the market and a course of conduct that artificially inflated the prices of Apollo's securities
3 and operated as a fraud or deceit on Class Period purchasers of Apollo's securities by failing
4 to disclose the truth about Defendants' backdating of stock options granted to management.
5 When the full impact of defendants' prior misrepresentations and fraudulent conduct were
6 disclosed and became apparent to the market, the prices of Apollo's securities fell
7 precipitously as the prior artificial inflation came out. As a result of their purchases of
8 Apollo's securities during the Class Period, plaintiff and the other Class members suffered
9 economic loss, *i.e.*, damages under the federal securities laws.

10 74. By failing to disclose the truth about Defendants' backdating of stock options,
11 Defendants presented a misleading picture of Apollo's operations and financial performance.
12 Thus, instead of disclosing during the Class Period the truth about Apollo's operations and
13 financial performance, Defendants caused Apollo to conceal the truth.

14 75. Defendants' false and misleading statements had the intended effect and caused
15 Apollo's common stock to trade at artificially inflated levels throughout the Class Period,
16 reaching as high as \$97.93 per share on July 8, 2004.

17 76. As a direct result of defendants' disclosures on October 18, 2006, Apollo's
18 common stock price fell precipitously. These drops removed the inflation from the price of
19 Apollo's securities, causing real economic loss to investors who had purchased the
20 Company's securities during the Class Period.

21 77. The approximate 23% decline in the price of Apollo's common stock after these
22 disclosures came to light was a direct result of the nature and extent of defendants' fraud
23 finally being revealed to investors and the market. The timing and magnitude of Apollo's
24 common stock price declines negate any inference that the loss suffered by plaintiff and the
25 other Class members was caused by changed market conditions, macroeconomic or industry
26 factors or Company-specific facts unrelated to the defendants' fraudulent conduct. The
27 economic loss, *i.e.*, damages, suffered by plaintiff and the other Class members was a direct
28 result of Defendants' fraudulent scheme to artificially inflate the prices of Apollo's securities

1 and the subsequent significant decline in the value of Apollo's securities when Defendants'
2 prior misrepresentations and other fraudulent conduct were revealed.

3 **APPLICABILITY OF PRESUMPTION OF RELIANCE:**

4 **FRAUD ON THE MARKET DOCTRINE**

5 78. At all relevant times, the market for Apollo's securities was an efficient market
6 for the following reasons, among others:

7 (a) Apollo's stock met the requirements for listing, and was listed and
8 actively traded on the NASDAQ, a highly efficient and automated market;

9 (b) as a regulated issuer, Apollo filed periodic public reports with the SEC
10 and the NASDAQ;

11 (c) Apollo regularly communicated with public investors via established
12 market communication mechanisms, including through regular disseminations of press
13 releases on the national circuits of major newswire services and through other wide-ranging
14 public disclosures, such as communications with the financial press and other similar
15 reporting services; and

16 (d) Apollo was followed by several securities analysts employed by major
17 brokerage firms who wrote reports which were distributed to the sales force and certain
18 customers of their respective brokerage firms. Each of these reports was publicly available
19 and entered the public marketplace.

20 79. As a result of the foregoing, the markets for Apollo's securities promptly
21 digested current information regarding Apollo from all publicly available sources and
22 reflected such information in the prices of the securities. Under these circumstances, all
23 purchasers of Apollo's securities during the Class Period suffered similar injury through their
24 purchase of Apollo's securities at artificially inflated prices and a presumption of reliance
25 applies.

26 **NO SAFE HARBOR**

27 80. The statutory safe harbor provided for forward-looking statements under certain
28 circumstances does not apply to any of the allegedly false statements pleaded in this

1 complaint. Many of the specific statements pleaded herein were not identified as “forward-
2 looking statements” when made. To the extent there were any forward-looking statements,
3 there were no meaningful cautionary statements identifying important factors that could cause
4 actual results to differ materially from those in the purportedly forward-looking statements.
5 Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking
6 statements pleaded herein, defendants are liable for those false forward-looking statements
7 because at the time each of those forward-looking statements was made, the particular
8 speaker knew that the particular forward-looking statement was false, and/or the forward-
9 looking statement was authorized and/or approved by an executive officer of Apollo who
10 knew that those statements were false when made.

11 **COUNT I**

12 **Violation Of Section 10(b) Of The Exchange Act And Rule 10b-5**

13 **Promulgated Thereunder Against All Defendants**

14 81. Plaintiff repeats and realleges each and every allegation contained above as if
15 fully set forth herein.

16 82. During the Class Period, defendants carried out a plan, scheme and course of
17 conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing
18 public regarding Apollo’s business, operations, management and the intrinsic value of Apollo
19 securities; and (ii) cause plaintiff and other members of the Class to purchase Apollo’s
20 securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and
21 course of conduct, defendants, and each of them, took the actions set forth herein.

22 83. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made
23 untrue statements of material fact and/or omitted to state material facts necessary to make the
24 statements not misleading; and (c) engaged in acts, practices, and a course of business which
25 operated as a fraud and deceit upon the purchasers of the Company’s securities in an effort to
26 maintain artificially high market prices for Apollo’s securities in violation of Section 10(b) of
27 the Exchange Act and Rule 10b-5. All defendants are sued either as primary participants in
28 the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

1 84. Defendants, individually and in concert, directly and indirectly, by the use,
2 means or instrumentalities of interstate commerce and/or of the mails, engaged and
3 participated in a continuous course of conduct to conceal adverse material information about
4 the business, operations and future prospects of Apollo as specified herein.

5 85. These defendants employed devices, schemes and artifices to defraud, while in
6 possession of material adverse non-public information and engaged in acts, practices, and a
7 course of conduct as alleged herein in an effort to assure investors of Apollo's value and
8 performance and continued substantial growth, which included the making of, or the
9 participation in the making of, untrue statements of material facts and omitting to state
10 material facts necessary in order to make the statements made about Apollo and its business
11 operations and future prospects in the light of the circumstances under which they were made,
12 not misleading, as set forth more particularly herein, and engaged in transactions, practices
13 and a course of business which operated as a fraud and deceit upon the purchasers of Apollo's
14 securities during the Class Period.

15 86. Each of the Individual Defendants' primary liability, and controlling person
16 liability, arises from the following facts: (i) the Individual Defendants were high-level
17 executives and/or directors at the Company during the Class Period and members of the
18 Company's management team or had control thereof; (ii) each of these defendants, by virtue
19 of his responsibilities and activities as a senior officer and/or director of the Company was
20 privy to and participated in the creation, development and reporting of the Company's
21 internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed
22 significant personal contact and familiarity with the other defendants and was advised of and
23 had access to other members of the Company's management team, internal reports and other
24 data and information about the Company's finances, operations, and sales at all relevant
25 times; and (iv) each of these defendants was aware of the Company's dissemination of
26 information to the investing public which they knew or recklessly disregarded was materially
27 false and misleading.

1 87. The defendants had actual knowledge of the misrepresentations and omissions
2 of material facts set forth herein, or acted with reckless disregard for the truth in that they
3 failed to ascertain and to disclose such facts, even though such facts were available to them.
4 Such defendants' material misrepresentations and/or omissions were done knowingly or
5 recklessly and for the purpose and effect of concealing Apollo's operating condition and
6 future business prospects from the investing public and supporting the artificially inflated
7 price of its securities. As demonstrated by defendants' overstatements and misstatements of
8 the Company's business, operations and earnings throughout the Class Period, defendants, if
9 they did not have actual knowledge of the misrepresentations and omissions alleged, were
10 reckless in failing to obtain such knowledge by deliberately refraining from taking those steps
11 necessary to discover whether those statements were false or misleading.

12 88. As a result of the dissemination of the materially false and misleading
13 information and failure to disclose material facts, as set forth above, the market prices of
14 Apollo's securities were artificially inflated during the Class Period. In ignorance of the fact
15 that market prices of Apollo's publicly-traded securities were artificially inflated, and relying
16 directly or indirectly on the false and misleading statements made by defendants, or upon the
17 integrity of the market in which the securities trade, and/or on the absence of material adverse
18 information that was known to or recklessly disregarded by defendants but not disclosed in
19 public statements by defendants during the Class Period, plaintiff and the other members of
20 the Class acquired Apollo securities during the Class Period at artificially high prices and
21 were damaged thereby.

22 89. At the time of said misrepresentations and omissions, plaintiff and other
23 members of the Class were ignorant of their falsity, and believed them to be true. Had
24 plaintiff and the other members of the Class and the marketplace known the truth regarding
25 Apollo's financial results, which were not disclosed by defendants, plaintiff and other
26 members of the Class would not have purchased or otherwise acquired their Apollo securities,
27 or, if they had acquired such securities during the Class Period, they would not have done so
28 at the artificially inflated prices which they paid.

1 their positions as controlling persons, the Individual Defendants are liable pursuant to Section
2 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct,
3 plaintiff and other members of the Class suffered damages in connection with their purchases
4 of the Company's securities during the Class Period.

5 **WHEREFORE**, plaintiff prays for relief and judgment, as follows:

6 A. Determining that this action is a proper class action, designating plaintiff as
7 Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal
8 Rules of Civil Procedure and plaintiff's counsel as Lead Counsel;

9 B. Awarding compensatory damages in favor of plaintiff and the other Class
10 members against all defendants, jointly and severally, for all damages sustained as a result of
11 defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

12 C. Awarding plaintiff and the Class their reasonable costs and expenses incurred in
13 this action, including counsel fees and expert fees; and

14 D. Such other and further relief as the Court may deem just and proper.

15 **JURY TRIAL DEMANDED**

16 Plaintiff hereby demands a trial by jury.

17 DATED this _____ day of November, 2006.

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